

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY LINDEL FARMER,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2008

No. 275906  
Oakland Circuit Court  
LC No. 2006-210847-FC

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of armed robbery, MCL 750.529, and was sentenced as a fourth habitual offender, MCL 769.12, to ten to 30 years in prison. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

It was undisputed at trial that defendant committed the relevant robbery. The disputed question was whether defendant was guilty of armed robbery or the less serious crime of unarmed robbery.

Defendant first argues that the trial court's verdict was against the great weight of the evidence. We disagree.

A verdict is against the great weight of the evidence if "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). The evidence did not preponderate heavily against the trial court convicting defendant of armed robbery based on its finding that defendant represented orally or otherwise that he had a weapon during the robbery. See MCL 750.529 (defining the aggravating element for armed robbery as opposed to unarmed robbery to occur in relevant part where a person "represents orally or otherwise that he or she is in possession of a dangerous weapon"). According to the victim, defendant had his hand in his jacket pocket so that his hand appeared to be around an object that was pointed at the victim during the robbery, defendant looked and nodded toward his jacket during the robbery and made threatening statements, telling her to "hurry up" if she knew what was good for her and that she had to stop talking loudly or something would happen to her. This testimony strongly supports a finding that defendant by his oral statements and gestures represented to the victim that he had a gun at the time of the robbery.

Defendant attacks the victim's credibility because her police statement did not recount statements she testified were made by defendant. However, it is apparent that the victim was simply a store clerk doing her job at the time of the robbery, with no preexisting connection or animus against defendant that would provide her with strong motive to lie about whether defendant appeared to be, or suggested that he was, armed. In contrast, defendant had substantial motive to lie about whether he had or acted like he had a weapon at the time of the robbery, because he acknowledged that he knew there was a greater potential penalty for armed robbery than for unarmed robbery.

It is also plausible that the victim was more likely to have complied with defendant's demand that she give him money belonging to the store if he implied that he had a weapon than if he did not do so, particularly given defendant's acknowledgment in his testimony that she was larger than he was. Further, it is readily understandable that the victim would not have recounted all details about the robbery while she was under the emotional stress of the incident shortly after it occurred. Moreover, as a matter of common sense, the focus of the police immediately after the incident would be on eliciting details to assist in identifying the robber; neither the victim nor the police would have had particular reason to believe the robber would advance a version of events in which he acknowledged commission of the robbery but denied suggesting he was armed during it. It clearly was not against the great weight of the evidence for the trial court to credit the testimony of a store clerk indicating that defendant suggested he had a gun during the incident over that of defendant who undisputedly committed the robbery at issue.

Defendant also argues that trial counsel was ineffective in failing to investigate whether still photographs of defendant at the checkout counter at the time of the robbery existed in light of the known existence of a still photograph of defendant entering the store. We conclude that defendant has not established a claim of ineffective assistance of counsel.

To establish a claim of ineffective assistance of counsel a defendant must show that counsel's performance was deficient and a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Because defendant did not raise this issue below, our review is limited to the existing record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005). Defendant has not provided any affidavit or other evidence to support his claim that trial counsel failed to investigate whether still photographs of defendant at the counter existed or to support a finding of prejudice, i.e., evidence that any still photograph that may exist would actually be favorable to defendant. Thus, defendant has failed to meet his burden "of establishing the factual predicate" for his ineffective assistance of counsel claim. See *Carbin*, *supra*.

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra